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RAM PRAKASH PANDEY

v.

STATE OF U.P. AND ANR.

AUGUST 31, 2001

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[K.T. THOMAS AND S.N. VARIAVA, JJ.]

*Code of Criminal Procedure, 1973 :*

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*S.437 (2)—Life convict—Committing another offence of murder—Grant of bail—Held, not to be released on bail unless there is no reasonable ground for believing that he has committed the offence and/or there are Special reasons to do so—Order of High Court granting bail ignoring the provisions of s.437(2) set aside.*

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Respondent No. 2 a life convict, while on bail pending appeal against his conviction and sentence, was arrested for another offence of murder of appellant's wife. The prosecution case was that the appellant's wife was an eyewitness in the case of murder of the wife of respondent No. 2 and in that case respondent No. 2 was convicted and sentenced to imprisonment for life by Trial Court. Respondent No. 2 filed appeal against his conviction and sentence and pending appeal he was released on bail. When he came out, he

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alongwith another person shot dead the wife of the Appellant. On an FIR being lodged by the appellant, a case was registered under section 302 read with section 34 IPC against respondent No.2, and his co-accused who absconded. Application of respondent No.2 for bail was rejected by the Sessions Court. Thereafter, he approached the High Court, which granted

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him bail. Aggrieved, the husband of the deceased, filed the present appeal.

Allowing the appeal, the Court

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HELD : 1. Bail has ben granted to respondent No. 2 by the High Court ignoring the provisions of Section 437 of the Code of Criminal Procedure, 1973. In view of s.437(2), a person who has been previously convicted of an offence punishable with life imprisonment shall not be released on bail unless there is no reasonable ground for believing that such a person has committed the offence and/or there are special reasons to do so. [425-B; 427-B]

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2. The High Court has dealt with the matter in a most cursory manner.

It is to be seen that the co-accused is still absconding. Two witnesses have already retracted their statements. There are still eye witnesses, who have directly connected respondent No.2 and assigned a specific role to him in the murder of the deceased. Thus at this stage it could not be said that there is reasonable ground for believing that respondent No.2 has not committed the offence. No special reasons for granting bail have been indicated by the High Court. The alleged ailment of respondent No.2 is also not such as required releasing him on bail. He can always apply to the jail authorities for providing him medical treatment, if required. The order of the High Court granting bail is set aside. [425-A, B; 427-C, D]

CRIMINAL APPELLATE JURISDICTION : Civil Appeal No. 880 of 2001.

From the Judgment and Order dated 29.9.2000 of the Allahabad High Court in Cri.M.B.A. No. 12733 of 2000.

Ms. Rachana Srivastava for the Appellant.

Prakash Kr. Singh and A.S. Pundir for the Respondent No. 1.

Dinesh Dwivedi, Shashinder Tripathi and M.P. Shorawala for the Respondent No. 2.

The Judgment of the Court was delivered by

S.N. VARIAVA, J. Leave granted.

Heard parties.

This Appeal is against an Order dated 29th September, 2000 by which the High Court of Allahabad has granted bail to the 2nd Respondent.

Briefly stated the facts leading to this Appeal are as follows:

The Appellant is the 1st informant and husband of one deceased Hem Lata Pandey. The said deceased Hem Lata Pandey had given evidence against the 2nd Respondent, as an eye witness, in a case of murder of the wife of the 2nd Respondent. This had resulted in the conviction of the 2nd Respondent by the Trial Court. The trial Court has given a sentence of life imprisonment to the 2nd Respondent.

A The 2nd Respondent filed an appeal. Pending appeal the appellate court granted him bail. Apprehending danger to life the deceased Hem Lata Pandey had applied to the Government for protection. She had even filed a petition in the High Court of Judicature at Allahabad. That petition has been disposed of by the High Court with a direction to the Home Secretary to consider the representation made by the deceased and take appropriate action. In spite of this direction no protection was given to the deceased.

B It is a case of the appellant that on 31st January, 2000 at about 2.30 p.m., when the appellant, his wife, two sons and two servants were in their farm to irrigate the crop, the 2nd Respondent and the co-accused by name C Vinod Kumar suddenly appeared at the farm, opened fire on Hem Lata Pandey with their guns and killed her.

The appellant, therefore, lodged an F.I.R. on the same day. A case has been registered as Crime No. 21/2000 under Section 302 read with Section 34 of the I.P.C. The co-accused Vinod Kumar is absconding and has not yet D been arrested.

One further fact which need to be mentioned is that the two servants who were present had earlier given their statements to the Police under Section 164 of the Criminal Procedure Code. Those two servants have now filed affidavits before the Trial Court denying that they have witnessed the incident. E

On these facts the Session Court rejected, on 13th July, 2000. The bail application of the 2nd Respondent.

F The 2nd Respondent then applied for bail in the High Court. In spite of the fact that the 2nd Respondent had already been convicted and sentenced to life imprisonment and the fact that two eye witnesses have now retracted their statements even before the trial has started, the High Court has chosen to grant bail to the 2nd Respondent only on the following grounds:

G "It is not disputed that the investigations of the case has been entrusted to CB./C.I.D. by the order of the Chief Minister, Copy whereof is annexure-10. It is also not disputed that the CB./C.I.D. normally takes an years or so in concluding the investigation. The allegations of ailment of the applicant are not specifically denied. Only this much is stated that documents are forged and have been prepared to obtain bail.

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Considering facts and circumstances of the case I am of the view that the applicant may be released on bail. A

In our view the High Court has dealt with the matter in a most cursory manner. Bail has been granted ignoring the provisions of Section 437 of the Criminal Procedure Code. Section 437 of the Criminal Procedure Code read as follows: B

*"437. When bail may be taken in case of non-bailable offence.-(1)* When any person accused of, or suspected of, the commission of any non-bailable offence is arrested or detained without warrant by an officer-in-charge of a police station or appears or is brought before a court other than the High Court of Session, he may be released on bail, but- C

- (i) such person shall not be so released if, there appear reasonable grounds for believing that he has been guilty of an offence punishable with death or imprisonment for life;
- (ii) such person shall not be so released if such offence is a cognizable offence and he had been previously convicted of an offence punishable with death, imprisonment for life or imprisonment for seven year or more, or he had been previously convicted on two or more occasions of a non-bailable and cognizable offence: D

Provided that the Court may direct that a person referred to in Cl. (i) or Cl. (ii) be released on bail if such person is under the age of sixteen years is a woman or is sick or infirm; E

Provided that the Court may also direct that a person referred to in Cl. (ii) be released on bail if it is satisfied that it is just and proper so to do for any other special reason: F

Provided also that the mere fact that an accused person may be required for being identified by witnesses during investigation shall not be sufficient ground for refusing to grant bail if he is otherwise entitled to be released on bail and gives an undertaking that he shall comply with such directions as may be given by the Court. G

- (2) If it appears to such officer or Court at any stage of the investigation, inquiry or trial, as the case may be, that there are not reasonable grounds for believing that the accused has committed a non-bailable offence, but that there are sufficient H

- A grounds for further inquiry into his guilt the accused shall subject to the provisions of Section 446-A and pending such inquiry be released on bail or at the discretion of such officer of Court, on the execution by him of a bond without sureties for his appearance as hereinafter provided.
- B (3) When a person accused or suspected of the commission of an offence punishable with imprisonment which may extend to seven years or more or of an offence under Chapter VI, Chapter XVI or Chapter XVII of the Indian Penal Code (45 of 1860), or abetment of, or conspiracy or attempt to commit any such offence is released on bail under sub-section (1) the Court may impose any condition which the Court considers necessary-
- C (a) in order to ensure that such person shall attend in accordance with the conditions of the bond executed under this Chapter, or
- D (b) in order to ensure that such person shall not commit an offence similar to the offence of which he is accused or of the commission of which he is suspected, or
- (c) otherwise in the interests of justice.
- E (4) An officer or a court releasing any person on bail under sub-section (1) or sub-section (2), shall record in writing his or its reasons or special reasons for so doing.
- (5) Any Court which has released a person on bail under sub-section (1) or sub-section (2), may if it considers it necessary so to do direct that such person be arrested and commit him to custody.
- F (6) If in any case triable by Magistrate the trial of a person accused of any nonbailable offence is not concluded within a period of sixty days from the first date fixed for taking evidence in the case, such person shall, if he is in custody during the whole of the said period, be released on bail to the satisfaction of the Magistrate, unless for reasons to be recorded in writing, the Magistrate otherwise directs.
- G (7) If, at any time after the conclusion of the trial of a person accused of a non-bailable offence and before judgment is delivered, the Court is of opinion that there are reasonable grounds for believing that the accused is not guilty of any such offence, it shall release
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the accused, if he is in custody, on the execution by him of a bond without sureties for his appearance to hear judgment delivered." A

Thus a person who has been previously convicted of an offence punishable with life imprisonment shall not be released on bail unless there is no reasonable ground for believing that the person has committed the offence and/or there are special reasons to do so. In this case it is to be seen that the co-accused is still absconding. Two witnesses, have already retracted their statements. There are still eye witnesses, who have directly connected the 2nd Respondent and assigned a specific role to the 2nd Respondent in the murder of the deceased. Thus at this stage it could not be said that there is reasonable ground for believing that 2nd Respondent has not committed the offence. No special reasons for granting bail have been indicated by the High Court. The alleged ailment of the 2nd Respondent is also not such as required releasing him on bail. The 2nd Respondent can always apply to the jail authorities to see that he gets the required medical treatment. B C

In our view the Order of the High Court granting bail cannot be sustained. We accordingly set aside the Order. 1st Respondent is directed to ensure that the 2nd Respondent is taken into custody forthwith. D

The Appeal stands disposed of accordingly. There shall be no Order as to costs. E

R.P.

Appeal allowed.